

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Libby,

Complainant,

vs.

JoAnn I. Weaver,

Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

TO: Mark Libby, 30387 N. Spruce Drive, Breezy Point, MN 56472; and JoAnn Weaver, 9914 Weavers Lake Road, Breezy Point, MN 56472.

On April 2, 2007, Mark Libby filed a Complaint with the Office of Administrative Hearings alleging that JoAnn Weavers violated Minnesota Statutes §§ 211A.02 and 211A.03 by failing to file accurate or complete campaign financial reports.¹ After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minnesota Statutes § 211A.02, subd. 2(4) with respect to the claim that Ms. Weavers failed to identify the purpose for each expenditure in her final report covering the period October 30 to November 13, 2006. This determination is described in more detail in the attached Memorandum. All of the other allegations in the Complaint are dismissed.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the

¹ Mr. Libby requested an expedited probable cause hearing. However, an expedited probable cause hearing is not required for complaints filed after the election at issue. Instead, this matter will be set on for a prehearing conference and evidentiary hearing to be held within 90 days after the complaint was filed. (See, Minn. Stat. § 211B.33 and 211B.35).

unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: April 4, 2007

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Pursuant to Minnesota Statutes § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year, must file financial reports with the “filing officer”² for that office. The reports filed by a candidate or committee must include the total amount of receipts and expenditures for each time period covered, as well as the purpose of each expenditure.³

JoAnn Weaver was a candidate for Mayor of Breezy Point in 2006, and was elected to that office in the November general election. According to documents submitted with the Complaint, Ms. Weaver filed three campaign financial reports in 2006. The first report covered the period from August 15 to September 8, 2006. In this report, Ms. Weaver indicated that she received a total of \$1,950 in contributions and made no expenditures. The second report covered the period from September 9 to

² Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

³ Minn. Stat. § 211A.02, subd. 2(3) and (4) (2006).

October 29, 2006. In this report, Ms. Weaver indicated that she received a total of \$2,255 in contributions, and that she spent a total of \$2,682.39 in campaign expenditures. Ms. Weaver attached a list of the expenditures to this report and indicated in parenthesis the purpose of each expenditure. The final report covered the period from October 30 to November 13, 2006. Ms. Weaver indicated in this report that she received no contributions and that she spent a total of \$1,513.90. Although the report indicates “see attached” under the heading “expenditures,” the Complaint alleges that no attachment listing the expenditures and their purpose was included.

Based on these reports, the Complaint alleges that Ms. Weaver failed to account for the \$1,522.61 she received in campaign contributions.⁴ As a candidate spending more than \$750 in a calendar year, Ms. Weaver is required, under Minnesota Statutes § 211A.02, subd. 2(3) and (4), to list the total amount of expenditures and the purpose of each expenditure on her campaign finance report. Ms. Weaver did list the total amount of expenditures on each report she submitted. However, based on the information provided in the Complaint, she failed to identify the purpose of each expenditure on her final report. Although the report states “see attached,” it appears no further information was attached.

For purposes of the prima facie determination, the facts alleged in the Complaint are assumed to be true unless they are patently false or inherently incredible. Given this standard, the Administrative Law Judge finds that the Complaint has alleged a prima facie violation of Minn. Stat. § 211A.02, subd. 2(4) with respect to Ms. Weaver’s alleged failure to identify the purpose of each campaign expenditure made in the reporting period covered by her final report. This allegation will proceed to a prehearing conference and evidentiary hearing to be scheduled in the near future.

Candidates or committees filing campaign financial reports are also required to report the name of any individual or committee that made one or more contributions during the calendar year that in the aggregate are equal to or greater than \$500.⁵ In addition, in cities with a population of under 100,000, a candidate or committee is prohibited from accepting aggregate contributions from an individual or committee in excess of \$300.⁶ The Complaint alleges that Ms. Weaver failed to report the individuals or groups who made contributions to her campaign that were equal to or greater than \$300, in violation of Minnesota Statutes § 211A.02, subd. 2(5).

Although candidates running for office in Breezy Point are prohibited from *accepting* contributions in excess of \$300 from an individual or committee, the statute only requires that they *report* contributors when the amount received is equal to or greater than \$500.⁷ Therefore, in order to state a prima facie violation of Minnesota Statutes § 211A.02, subd. 2(5), the Complaint would have to allege that Ms. Weaver received a contribution from a single source equal to or greater than \$500. The Complaint does not do this. But even if the reporting requirement was \$300, the Complainant has failed to allege any facts to suggest that Ms. Weaver accepted either

⁴ \$4205 in contributions minus \$2682.39 in expenditures equals \$1,522.61.

⁵ Minn. Stat. § 211A.02, subd. 2(5).

⁶ Minn. Stat. § 211A.12.

⁷ Minn. Stat. § 211A.02, subd. 2(5).

amount (\$300 or \$500) from a single source in violation of Minn. Stat. § 211A.02, subd. 2(5). Absent a specific allegation that Ms. Weaver received contributions from a single source greater than the amount allowed and failed to report the contributor's name, her campaign financial reports are sufficient to meet the statutory requirements. Therefore, the claim that Ms. Weaver failed to identify the individual who gave more than \$300 is dismissed because the Complainant has failed to allege sufficient facts to support a prima facie violation of Minn. Stat. § 211A.02, subd. 2(5).

The Complaint also alleges that Ms. Weaver failed to list expenditures for the newspaper advertisements and website that the "JoAnn Weaver Volunteer Committee" prepared and paid for on behalf of Ms. Weaver's campaign. The Complainant attached copies of six campaign advertisements the JoAnn Weaver Volunteer Committee ran in the September 28, October 5, October 19, October 26, and November 2, 2006, editions of the *Lake County Echo* newspaper, as well as a copy of her webpage that states: "prepared and paid for by the JoAnn Weaver Volunteer Committee." In addition, the Complaint states that the JoAnn Weaver Volunteer Committee failed to file campaign reports.

Contrary to the Complainant's claim, Ms. Weaver did list expenditures on her second campaign financial report for the website and newspaper advertisements. Specifically, Ms. Weaver listed two separate expenditures to Echo Publishing in the amounts \$161.25 and \$642.50 for advertising, and one expenditure in the amount of \$165 for her website. Although Ms. Weaver filed the report as "candidate" rather than as a "campaign committee," she is listed on her webpage as the contact person for the "JoAnn Weaver Volunteer Committee." In addition, the Complaint in this matter is directed only against JoAnn Weaver and not her Volunteer Committee. Consequently, the Complainant's claim that the Volunteer Committee failed to file reports cannot be considered. For all of these reasons, the Complainant's allegation that Ms. Weaver failed to identify expenditures related to her newspaper advertisements and webpage is dismissed.

Finally, the Complaint alleges that Ms. Weaver failed to include "both the expenditure and contributor breakdown" in her final campaign report. Pursuant to Minn. Stat. § 211A.03, a candidate may file a final report when all debts have been settled and all assets in excess of \$100 in the aggregate are disposed of. Ms. Weaver did file a final report on November 13, 2006, that covered the period from October 30 to November 13, 2006. On this report, she indicated that she received no contributions and that she spent a total of \$1,513.90. Although a notation in the expenditure section states, "see attached," no attachment identifying the purpose of each expenditure was included with the Complaint. This is the same allegation as the one discussed above in the second through fourth paragraphs. The Administrative Law Judge finds that the Complainant has alleged a prima facie violation of Minn. Stat. § 211A.02, subd. 2(4) with respect to Ms. Weaver's failure to identify the purpose of each expenditure in her final campaign report (October 30 to November 13, 2006). This allegation will proceed to a telephone prehearing conference and evidentiary hearing, which will be scheduled in the near future. The remaining allegations are dismissed.

B.J.H.